



**COURT OF MAGISTRATES (MALTA)**  
**MAGISTRATE DR. MARSE-ANN FARRUGIA LL.D.**

**Sitting held to-day Wednesday 18th July 2018**

**Application Number: 237/2013 MLF**

**Lydia Felice**

**vs**

**Duarte Amado and Federico Formigal Monteiro**

The Court,

Having seen the application of Lydia Felice where she requested that the defendants Duarte Amado and Federico Formigal Monteiro be condemned to pay her the sum of ten thousand, three hundred fifty four Euro (€10,354) representing the payment of rent, for the period from November 2012 to July 2013 which are due to her, as well as damages suffered by the plaintiff in the premises ‘Rambler’s Rest’ Triq G. Borg Olivier Sliema, together with the costs and the interest which started being incurred from the date of the filing of this application, as well as the costs of the letter and the garnishee order filed on the 12th July 2013 against the defendants.

Having seen the reply of Bruno Duarte Monteiro Pais De Oliveira Amado, wherein he submitted:

1. That preliminarily, the demand put forward by plaintiff is unfounded in both law and fact;
2. That in fact no sum of money is due by defendant to plaintiff for the period indicated in her application;
3. That this is preliminary because the defendant, together with his brother, had already terminated the rent agreement with plaintiff, and this by means of correspondence in writing dated the 20<sup>th</sup> of July, two thousand and twelve (2012) whereby defendant gave plaintiff notice of termination of their rent agreement with effect from October two thousand and twelve (2012);
4. That consequently, plaintiff is demanding money for a period of rent that had been already terminated;
5. That it is the defendant who is owed money from plaintiff, and this is because plaintiff has refused to return their deposit for no valid legal reason;
6. That the defendants never caused any damages in plaintiff's property and hence no sum is due to her by way of damages.
7. That to the contrary, defendants carried out a considerable number of improvements in her property, amounting to around thirty thousand Euro (30,000), hence increasing the value of said property;

Having seen the declaration of Doctor Edward Gatt for the plaintiff in the sitting of the 6<sup>th</sup> October 2014, wherein he declared that the plaintiff is renouncing her claim with regards to the defendant Federico Formigal Monteiro.

Having heard the evidence, seen all the documents submitted and all the records of the case;

Considered as follows:

## The Facts:

The relevant facts which gave rise to these proceedings are the following:

1. By means of a private writing of the 2<sup>nd</sup> November 2011, the plaintiff and her sister Anna Maria Felice<sup>1</sup> gave the premises in question on lease to the defendants and to a certain Simon Rattray in solidum between themselves, to be used for a pub, for a period of five years, commencing from the 2<sup>nd</sup> December 2011, but the first two years were di fermo.
2. Nevertheless clause 3 of the agreement stipulated that *“Should the lessee wish to terminate the lease prior to the expiration of the lease agreement, they may do so, provided they give 3 months’ notice in writing to the lessor.”*
3. On the agreement, the plaintiff declared that she received the sum of €9234.00 which covered the payment of the rent between the 2<sup>nd</sup> December 2011 and the 2<sup>nd</sup> August 2012, namely for a period of eight months. The other payments of the lease were to be effected monthly in advance.
4. All bills for services in the premises had to be borne by the lessees.
5. On the agreement, the plaintiff also received the sum of €3,500 from the lessees as a deposit. According to Clause 19 of the agreement, *“such deposit is to be refunded to the lessees at the termination of the lease, provided that the tenement after having been inspected by the lessor or his agent, is found to be in the same condition as it was when occupation was effected, and that the lessees have paid all trading licences, water, telephone and electricity bills and gas and any other relative bills, up to the termination of the lease.”*
6. After the signing of the lease agreement, the water and electricity services were transferred on the name of the defendant Federico Monteiro.
7. Early after the commencement of the lease, Simon Rattray decided to end the relationship with the defendants, who are brothers.
8. With the permission of the plaintiff, the defendants had converted a store into a bathroom.

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<sup>1</sup> The Court notes that the defendant raised no issue on the fact that these proceedings were filed by the plaintiff alone, and not together with her sister Anna Maria Felice.

9. The defendants sent the plaintiff notice of termination of the lease on the 20<sup>th</sup> July 2012, and according to the evidence of the plaintiff, they vacated towards the end of November.
10. On the day the defendants were to vacate the premises, the plaintiff went on site and the defendants requested the refund of the deposit. However, the plaintiff refused because they did not provide receipts that all outstanding water and electricity bills were fully paid. Also there was a lot of garbage in the pub, and a couple of chairs broken.
11. When the premises were vacated, the plaintiff personally switched off the water and electricity supplies.
12. From April 2013, the plaintiff started finding invoices in the pub from Automated Revenue Management Services Limited (ARMS) addressed to defendant Federico Monteiro requesting payment for the water and electricity services. The last invoice dated 22<sup>nd</sup> May 2014 requested payment for a total of €2,887.80.
13. During the year 2013, the plaintiff realised that although the premises were closed, the water and electricity meters were indicating an increase in consumption. On the 3<sup>rd</sup>. July 2013, she met Ivana Salerno, who was sent by the defendant on his behalf, at the offices of ARMS. Salerno insisted that the plaintiff signs the relative forms so that the meters are transferred in her name, so that she could pay the relative bills, but the plaintiff refused.
14. In September 2013, the plaintiff asked ARMS to send an inspector to inspect the premises, and this inspector told her that there was a water leakage from somewhere in the premises, and according to him the root of the problem was coming from the alterations the defendants had made when they converted the store into a bathroom.
15. Subsequently the plaintiff found a letter dated 19<sup>th</sup> September 2014 from ARMS addressed to defendant Monteiro informing him that since the pending amount of €2,537.39 had not been paid, the service was being suspended.
16. The plaintiff also received a bill from GO p.l.c dated 9<sup>th</sup> January 2013, relating to cable television services in the bar for the amount of Eur714.89, which she paid.
17. Although the premises had been vacated, the plaintiff did not lease the property again because of these problems.

## Considerations made by this Court

The plaintiff is requesting this Court to award her the sum of €10,354.00, representing the rent she alleges she has lost as a result of the fact that the premises had been vacated, and she was unable to lease it again, due to the outstanding bills on the premises. She calculated the sum of the rent due from November 2012, when the property was vacated till July 2013, when these proceedings were filed.

As has been said above, at the beginning of these proceedings, the plaintiff renounced her claim with regards to the defendant Federico Formigal Monteiro, and so these proceedings are only against Duarte Amado – something she could do, because in the lease agreement, the three lessees appeared in solidum between themselves.

Quite frankly, the Court considers that the plaintiff made a mountain out of a molehill of the relatively small dispute with the defendant on outstanding arrears of water and electricity bills – a dispute very common after the termination of the lease agreement.

From the evidence brought before it, the plaintiff is not contesting on the date the defendant vacated the pub, the pub was not in a condition to be leased again. It is true she found a lot of garbage in it, and a couple of chairs broken, but as she herself said under oath “... .. *I checked the place, there were just a few things broken, I mean a couple of stools and chairs ... .. (T)hey did make a bit of an expense because they wanted to change some things here and there, so I said: “A couple of chairs does (recte not) cost that much”, and I just ignored it.*”

So the real issues between the parties were the pending bills for services which had to be paid by the defendant and the refund of the deposit of €3,500.00 which had to be refunded by plaintiff, if at the termination of the lease she found the place in order, and all bills settled. But unfortunately, the parties ended up in such a heated pique between them that the plaintiff ended up missing the wood for the trees.

The defendant paid the plaintiff the deposit of €3,500.00 explicitly to enable her to set off this amount against any pending bills for services and/or damages at the termination of the lease. So, the Court simply cannot understand the stubbornness of the plaintiff not to transfer the services of water and electricity back on her name, so she could pay the outstanding bills, and if these bills exceed the amount of €3,500, to sue the defendant for the difference. This was the practical and logical thing to do, and that would have enabled her to lease the premises again.

The outstanding bill for water and electricity as at the 19<sup>th</sup> September 2014 – when the services were suspended, nearly two years after the termination of the lease – was €2,537.29. She had also paid the amount of €714.89. These two bills together amount to €3,252.18 – which is covered by the deposit of €3,500.00 which she has in her possession.

The stubbornness of the plaintiff in refusing to pay the water and electricity bills herself, cannot justify her claim for the financial loss she suffered because she could not lease the pub – because the creditor is always under an obligation to exercise due diligence to minimise the damages.<sup>2</sup>

From the evidence it seems that there is some water leakage in the premises, because despite the fact that the premises are not being used, the meter is registering water consumption. The plaintiff said that the ARMS inspector had told her that this is probably due to the works which the defendants did in converting a store into a bathroom. However, the plaintiff failed to get this inspector to give evidence in court, or summon an *ex parte* expert to give his opinion on the cause of the water seepage. In view of this lack of evidence, the Court certainly cannot say that the plaintiff has managed to prove at least on a basis of probability that the cause of the water seepage is due to the works done by the defendant.

In his fifth plea, the defendant submits that it is he who is owed money from the plaintiff, and this is because the plaintiff has refused to return their deposit for no valid legal reason. In view of the above considerations, the plaintiff was legally entitled to retain the amount €3,252.18 from the deposit of €3,500.00. However, since the defendant did not file a counter-claim, the Court cannot award him the balance due to him from this amount.

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<sup>2</sup> See Article 1051 of the Civil Code.

## **Conclusion**

In view of the above considerations, the Court accepts the first three pleas of the defendant Duarte Amado, and rejects all the requests of the plaintiff.

All expenses in connection with these proceedings against both defendants are to be borne by the plaintiff.

**Magistrate**

**Robert Bugeja**

**Deputy Registrar**